

## TABLE OF CONTENTS

	PAGE
Docket Entries .....	1a
Complaint (Doc. No. 1, Record on Appeal) .....	7a
Notice of Motion for Leave to Intervene (Doc. No. 5, Record on Appeal) .....	17a
Order to Show Cause and Affidavit in Support of Ap- plication for Leave to Intervene (Doc. No. 9, Record on Appeal) .....	44a
Order Granting Leave to Intervene (Doc. No. 11, Rec- ord on Appeal) .....	60a
Answer of State Defendants (Doc. No. 13, Record on Appeal) .....	63a
Order Granting Leave to Intervene (Doc. No. 14, Rec- ord on Appeal) .....	72a
Answer of Intervenor-Defendant Brydges (Doc. No. 22, Record on Appeal) .....	73a
Per Curiam Opinion dated July 21, 1972 (Doc. No. 23, Record on Appeal) .....	75a
Opinions of Gurfein and Cannella, JJ. and of Hays, C.J. dated October 2, 1972 (Doc. No. 24, Record on Appeal) .....	76a

Order Amending Opinion (Doc. No. 25, Record on Appeal) .....	77a
Order and Judgment dated October 20, 1972 (Doc. No. 28, Record on Appeal) .....	78a
Order dated January 22, 1973 Noting Probable Jurisdiction and Consolidating Appeals .....	79a

**Docket Entries**  
**CIVIL DOCKET**  
**UNITED STATES DISTRICT COURT**

72 Civ. 2286

**DATE**

**PROCEEDINGS**

- May 25-72 FILED COMPLAINT. ISSUED SUMMONS.
- May 31.72 Filed Notice of Motion. Re: 3 Judge Court ret. 6/6/72.
- Jun 13.72 Filed Geraldine M. Boylan, et al Notice of Motion. Re: Intervene Ref. 6/20/72.
- Jun 13.72 Filed Memorandum of Law of Geraldine M. Boylan, et al in support of Motion to Intervene.
- Jun 22-72 Filed ORDER that Geraldine M. Boylan, Priscilla L. Cherry, Joan M. Ducey, Nora H. Ferguson, Angelina M. Ferrarella, Ernest E. Roos, Jr. and Adamina Ruiz are granted leave to intervene as pty. defendants.; ordered that the proposed Answer of intervenor-defendants served on all other parties to this action be filed with this Clerk of Court, as the answer of said intervenor-defendants to pltf's. complaint; the caption to be amended as indicated. Gurfein, J. (mailed notice).
- Jun 22-72 Filed Designation of Judges. In addition to the Hon. Murray I. Gurfein, to hear and determine this cause, the following judges are designated: Hon. Paul R. Hays, U.S.C.J.,

*Docket Entries*

DATE	PROCEEDINGS
	U.S.C.A.; and Hon. John M. Cannella, U.S. D.J., USDC, SDNY. Friendly, Ch. J. U.S. C.A. Second Circuit. (mailed notice) (Also in 72 Civ. 2493).
Jun 23-72	Filed defts ANSWER to complaint
Jun 28 72	Filed Order Ordered Senator E W Brydges has leave to intervene in this cause and is made party and file answer in the same manner as if named original party in this cause Gurfein J (mailed notice)
Jul 3-72	Filed Plaintiffs' Brief.
Jul 6.72	Filed Brief on behalf of dfts. Nyquist, Levitt & Gallman.
JUL 6 72	Before: Hays, J., Cannella, J., Gurfein, J.—Hearing held—Decision Reserved.
JUL 12 72	Filed Pltffs' suppl. brief.
June 20 72	Filed Summons & entered Marshal's return—Served Ewald B Nyquist on 6-6-72.
JUL 14 72	Filed Reply brief for intervenor-Defts Boylan, Cherry, Ducey, Ferguson, Farrarella, Roos and Ruiz.
JUL 14 72	Filed ANSWER of Intervenor-Deft Senator Earl W Brydges
JUL 21 72	Filed PER CURIAM by Hays, CJ., Cannella, J., Gurfein J. "The motion for a declaratory judgment and to enjoin the implementation



*Docket Entries*

## DATE

## PROCEEDINGS

of Sec. 1 of Chapter 414 of the laws of NY 1972 is granted in favor of the pltff. Decision Reserved on the other matters in suit. Submit order, on five days notice. So Ordered."

SEPT 8 72 Filed Transcript of the record of proceedings dtd 6-20-72.

SEPT 8 72 [Filed Transcript of the record of proceedings dtd] 7-6-72.

Oct. 2-72 [Filed Transcript of the record of proceedings dtd] 7-6-72.

Oct. 2-72 Filed brief of Intervenor-Deft.

Oct. 2-72 Filed Brief for Intervenor-deft's. Boylan, Cherry, Ducey, Ferguson, Ferrarella, Roos & Ruiz.

Oct. 2-72 Filed pltff's memorandum of law in support of his motion to convene a three-judge court. (Filed in court on 6-20-72.)

Oct. 2-72 Filed brief on behalf of deft. Nyquist, Levitt & Gallman.

Oct. 2-72 Filed pltff's supplemental brief

Oct. 2-72 Filed pltff's brief.

Oct. 2-72 Filed OPINION #38804: A permanent injunction will be issued against, the enforcement of Sections 1 & 2 of the statute. Judgment will be, entered accordingly, pursuant to fed. R. Civ p. 54 (b). A permanent, in-

*Docket Entries*

## DATE

## PROCEEDINGS

junction against enforcement of section 3 of the statute will be, denied. The complaint so far as it relates to Section 3 of the, statute, will not be dismissed, however. The parties may move for, summary judgment or for an expedited trial. An order will be, settled on notice. The foregoing shall constitute the courts, Findings of fact & conclusions of law pursuant to fed. R. Civ. P. 52(a). Hays, J. U.S.C.J., Cannella, J. & Gurfein, J. Mailed notice.

- Oct. 10-72 Filed ORDER amending opinion filed Oct. 2, 1972, by deleting the word "plurality" in the first line of the last paragraph on page 12. Hays, C.J., Cannella, D.J. and Gurfein, D.J. (mailed notice).
- Oct 17 72 Filed Defts Notice of motion for summary judgment and of settlement of order & Judgment. (summary judgment—to dismiss complaint with respect to Sections 3, 4 and 5 of Chapter 414 of the 1972 Laws of NY)
- Oct 17 72 Filed Defts memo of law in support of motion filed this day.
- Oct. 20-72 Filed ORDER and JUDGMENT. Ordered that the defendants, their agents, etc. are permanently enjoined as indicated; ordered that defendants' and intervenor-defendants' motion for summary judgment with respect

*Docket Entries*

## DATE

## PROCEEDINGS

to Sections, 3, 4 and 5 of Chapter 414 of the 1972 Laws of New York, is granted; ordered that the complaint, insofar as it seeks a permanent injunction against enforcement of Sections 3, 4 and 5 of Chapter 414 of the Laws of New York is dismissed. 3 Judges—Hays, C.J., Cannella, D.J., and Gurfein, D.J. Judgment ent. 10/20/72. Ent. 10/25/72. (mailed notice).

- Nov. 3-72 Filed Notice of Appeal to the Supreme Court of the U. S.
- Oct. 27-72 Filed Notice of Appeal to the Supreme Court of the U. S.
- Nov. 8-72 Filed Notice of Appeal to the Supreme Court of U.S. by defts. Ewald B. Nyquist, Arthur Levitt and Norman Gallman.
- Nov. 17-72 Filed Notice of Appeal to the Supreme Court of the United States.
- Jun. 20-72 Filed affidavit in opposition to motion for prelim. Injunction & T.R.O.
- Jun 20-72 Filed (In Court) Order to show cause for leave to intervene. Ret. 6-20-72. Cooper, J.
- Nov. 28-72 Filed Order authorizing transmission of Record. to the Supreme Court of the U.S. Gurfein, J. (mailed notice).
- Jun 20-72 Filed memorandum of law of intervenor-defts. in opposition to pliffs. application for a temporary restraining order. (Filed in Court)

*Docket Entries*

DATE	PROCEEDINGS
Jan 5-73	Filed notice to the docket clerk that the record on appeal has been certified and transmitted to the U.S. Supreme Court on 1-5-73.
Jan. 29-73	Filed true copy of Supreme Court order. The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours is allotted for oral argument.

**Complaint**

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
Civil Action  
72 Civ. 2286

---

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY,  
BERT ADAMS, BERNARD BACKER, ALGERNON D. BLACK,  
THEODORE BROOKS, HERSCHEL CHANIN, NAOMI A. COWEN,  
ROBERT B. ESSEX, FLORENCE FLAST, REBECCA GOLDBLUM,  
BENJAMIN HAIBLUM, MARTHA LATIES, BLANCHE LEWIS,  
ELLEN A. MEYER, EDWARD D. MOLDOVER, ARYEH NEIER,  
DAVID SEELEY, ALBERT SHANKER, HOWARD M. SQUADRON,  
and CHARLES H. SUMNER,

*Plaintiffs,*

—against—

EWALD B. NYQUIST, as Commissioner of Education of the  
State of New York, ARTHUR LEVITT, as Comptroller  
of the State of New York, and NORMAN GALLMAN, as  
Commissioner of Taxation and Finance of the State  
of New York,

*Defendants.*

---

I. STATEMENT AS TO JURISDICTION

1. This is a civil action brought by the plaintiffs, on  
their own behalf and on behalf of all others similarly situ-

*Complaint*

ated, for a temporary and permanent injunction against the allocation and use of the funds of the State of New York to finance the operations of schools owned and controlled by religious organizations and organized for and engaged in the practice, propagation and teaching of religion, and to declare such use violative of the First and Fourteenth Amendments to the Federal Constitution.

2. Jurisdiction is conferred upon this Court pursuant to Title 28, United States Code, Sections 1331, 1343(3), 2281, 2283, 2201 and 2202.

3. The amount in controversy in this suit, exclusive of interest and costs, is in excess of Ten Thousand Dollars (\$10,000) as more fully appears hereinafter.

4. Plaintiff COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY (PEARL) is an unincorporated association whose constituent members are: American Ethical Union; Americans for Democratic Action; Americans for Public Schools; American Jewish Committee, New York Chapter; American Jewish Congress; A. Philip Randolph Institute; Association of Reform Rabbis of New York City and Vicinity; B'nai B'rith; Citizens Union of the City of New York; City Club of New York; Community Service Society, Committee on Public Affairs; Council of Churches of the City of New York; Episcopal Diocese of L. I., Department of Christian Social Relations; Humanist Society of Greater New York; Jewish Reconstructionist Foundation; Jewish War Veterans, New York Department; League for Industrial Democracy, New York City Chapter; National Council

*Complaint*

of Jewish Women; National Women's Conference of American Ethical Union; New York Civil Liberties Union; New York Jewish Labor Committee; New York State Americans United for Separation of Church and State; New York State Council of Churches; New York State Federation of Reform Synagogues; State Congress of Parents and Teachers, New York City District; Union of American Hebrew Congregations, New York State Council; Unitarian-Universalist Ministers Association of Metropolitan New York; United Community Centers; United Federation of Teachers; United Parents Associations; United Synagogue of America, New York Metropolitan Region; Women's City Club of New York; and Workmen's Circle, New York Division. The members of these organizations who reside in the State of New York are numerous and the organizational plaintiff and each of its constituent organizations carry on activities in the Southern District of New York. The organizational plaintiff and its constituents share as common objectives preservation of freedom of religion and the separation of church and state and opposition to the use of public funds for the support of sectarian or religious schools.

5. Each of the individual plaintiffs is a citizen of the United States. Each resides in the State of New York, and some reside in the Southern District of New York. Each of them pays income and various other taxes in and to the State of New York. Plaintiffs Bert Adams, Theodore Brooks, Herschel Chanin, Naomi A. Cowen, Blanche Lewis, Aryeh Neier and Albert Shanker have children regularly registered in and attending the elementary or secondary grades in the public schools of New York.



*Complaint*

6. Defendant Ewald B. Nyquist is Commissioner of Education of the State of New York and is sued herein in that capacity. Defendant Arthur Levitt is the Comptroller of the State of New York and is sued herein in that capacity. Defendant Norman Gallman is Commissioner of Taxation and Finance of the State of New York and is sued herein in that capacity.

**II. FACTUAL ALLEGATIONS**

7. On May 22, 1972, Governor Nelson A. Rockefeller signed into law an act, Laws 1972, Chapter 414, entitled, "An Act to amend the education law, in relation to health, welfare and safety grants for pupils in nonpublic schools; to establish an elementary and secondary education opportunity program of tuition reimbursement for parents of low income; to amend the tax law, in relation to a modification of federal adjusted gross income for parents of nonpublic school children; and to amend the education law, in relation to impacted aid for school districts and the purchase of existing structures to be used for school buildings." (The text of the said Act, hereinafter referred to as the Act, is set forth herein as Appendix A.)

8. The Act on its face and as construed and applied by the defendants authorizes and directs payments to schools which (1) are controlled by churches or religious organizations, (2) have as their purpose the teaching, propagation and promotion of a particular religious faith, (3) conduct their operations, curriculums and programs to fulfill that purpose, (4) impose religious restrictions on admissions, (5) require attendance at instruction in theology and re-

*Complaint*

ligious doctrine, (6) require attendance at or participation in religious worship, (7) are an integral part of the religious mission of the sponsoring church, (8) have as a substantial or dominant purpose the inculcation of religious values, (9) impose religious restrictions on faculty appointments, and (10) impose religious restrictions on what the faculty may teach.

9. The Act on its face and as construed and applied by the defendants authorizes and directs payments of tuition to schools which (1) are controlled by churches or religious organizations, (2) have as their purpose the teaching, propagation and promotion of a particular religious faith, (3) conduct their operations, curriculums and programs to fulfill that purpose, (4) impose religious restrictions on admissions, (5) require attendance at instruction in theology and religious doctrine, (6) require attendance at or participation in religious worship, (7) are an integral part of the religious mission of the sponsoring church, (8) have as a substantial or dominant purpose the inculcation of religious values, (9) impose religious restrictions on faculty appointments, and (10) impose religious restrictions on what the faculty may teach.

10. The Act on its face and as construed and applied by the defendants directs and authorizes New York State tax benefits for payments of tuition to schools which (1) are controlled by churches or religious organizations, (2) have as their purpose the teaching, propagation and promotion of a particular religious faith, (3) conduct their operations, curriculums and programs to fulfill that purpose, (4) impose

### *Complaint*

religious restrictions on admissions, (5) require attendance at instruction in theology and religious doctrine, (6) require attendance at or participation in religious worship, (7) are an integral part of the religious mission of the sponsoring church, (8) have as a substantial or dominant purpose the inculcation of religious values, (9) impose religious restrictions on faculty appointments, and (10) impose religious restrictions on what the faculty may teach.

11. The Act on its face and as construed and applied by the defendants authorizes and directs payment of public moneys to be used for the maintenance and repair of facilities used in whole or in part for sectarian instruction or religious worship.

12. It is against the religious conscience of each of the individual plaintiffs to be forced by the operation of the taxing power to contribute to the propagation of religion in general and to religions to which he does not adhere in particular, or for the support or maintenance of sectarian schools or places of worship.

13. The First Amendment of the United States Constitution, made applicable to the States by the Fourteenth Amendment, provides in part that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof \* \* \*."

### III. CAUSES OF ACTION

14. *First Count:* The Act on its face and as construed and applied by the defendants, is a law respecting an estab-

*Complaint*

lishment of religion in violation of the First Amendment of the United States Constitution in that it (a) constitutes governmental financing and subsidizing of schools which are controlled by religious bodies, organized for and engaged in the practice, propagation and teaching of religion, and of schools limiting or giving preference in, admission and employment to persons of particular religious faiths; (b) authorizes and directs payment of public moneys to be used for the maintenance and repair of facilities used in whole or in part for sectarian instruction or religious worship; (c) constitutes governmental action whose purpose and primary effect is to advance religion; (d) gives rise to an excessive governmental involvement in and entanglement with religion; and (e) gives rise to and intensifies political fragmentation and divisiveness on religious lines.

15. *Second Count*: The statute on its face and as construed and applied by the defendants, violates the First Amendment to the United States Constitution in that it prohibits the free exercise of religion on the part of the individual plaintiffs by reason of the fact that it constitutes compulsory taxation for the support of religion or religious schools.

**IV. OTHER ALLEGATIONS**

16. This suit involves a genuine case or controversy between the plaintiffs and defendants.

17. The plaintiffs have no plain, speedy or adequate remedy at law and will suffer irreparable injury unless a preliminary and permanent injunction is granted.

*Complaint*

## V. PRAYERS FOR RELIEF

18. The plaintiffs pray that the following relief be granted:

(1) That a three-judge court be convened as provided in Title 28, Sections 2281 and 2283 of the United States Code to declare unconstitutional and enjoin the enforcement of the Act, as hereinbefore set forth.

(2) That the defendants and each of them be enjoined from approving or paying any funds of the State of New York to schools owned or controlled by religious bodies or organized or engaged in the practice or teaching of religion or which limit, or give preference in, admission or employment to persons of a particular religious faith, whether such approval or payment is purported to be made pursuant to the aforesaid statute or otherwise.

(3) That the defendants and each of them be enjoined from approving or paying any funds of the State of New York to be used for payment of or reimbursement for tuition to schools owned or controlled by religious bodies or organized or engaged in the practice or teaching of religion or which limit, or give preference in, admission or employment to persons of a particular religious faith, whether such approval or payment is purported to be made pursuant to the aforesaid statute or otherwise.

(4) That the defendants and each of them be enjoined from according New York State tax benefits for tuition paid to schools owned or controlled by religious bodies or organized or engaged in the practice or teaching of religion

*Complaint*

or which limit, or give preference in, admission or employment to persons of a particular religious faith, whether such tax benefits are purported to be made pursuant to the aforesaid statute or otherwise.

(5) That a preliminary injunction pending the trial of the issues be granted to the plaintiffs against the defendants for the relief sought herein.

(6) That the plaintiffs be granted such other and further relief as the Court may deem just and proper.

May 25, 1972.

/s/ LEO PFEFFER

-----  
LEO PFEFFER

*Attorney for Plaintiffs*

Office and P. O. Address

15 East 84th Street

New York, N. Y. 10028

Tel.: (212) 879-4500

[Verification omitted in printing]

[Appendix A to Complaint, Chapter 414  
of the 1972 Laws of New York, printed  
in full in Appendixes to Jurisdictional  
Statements]



**Notice of Motion for Leave to Intervene**  
**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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[TITLE OMITTED IN PRINTING]

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**SIRS:**

PLEASE TAKE NOTICE that upon the annexed Affidavit of Porter R. Chandler, Esq., sworn to June 12, 1972, the annexed Affidavits of Geraldine M. Boylan, Joan M. Ducey and Ernest E. Roos, Jr., sworn to June 9, 1972, the annexed Affidavits of Priscilla L. Cherry, Nora H. Ferguson and Angelina M. Ferrarella, sworn to June 10, 1972, the annexed Affidavit of Adamina Ruiz, sworn to June 12, 1972, and upon all prior pleadings and proceedings herein, Geraldine M. Boylan, 3445 Holland Avenue, Bronx, New York 10467, Priscilla L. Cherry, 660 Willoughby Avenue, Brooklyn, New York 11206, Joan M. Ducey, 3226 Country Club Road, Bronx, New York 10465, Nora H. Ferguson, 238 Linden Boulevard, Brooklyn, New York 11226, Angelina M. Ferrarella, 1945 West 7th Street, Brooklyn, New York 11223, Ernest E. Roos, Jr., 155-19 Jewel Avenue, Flushing, New York 11367 and Adamina Ruiz, 955 Evergreen Avenue, Bronx, New York 10472 will move, on their own behalf and on behalf of all other individuals similarly situated in the State of New York, at a stated motion part to be held at Room 506 of the United States Courthouse, Foley Square, New York, New York on the 20th day of June, 1972 at ten o'clock in the forenoon or as soon thereafter as counsel can be heard for an order:

*Notice of Motion for Leave to Intervene*

(1) pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure permitting the above individuals to intervene as of right herein as parties defendant and directing that the proposed Answer annexed hereto be filed herein as the answer of the above individuals; or, in the alternative,

(2) pursuant to Rule 24(b)(2) of the Federal Rules of Civil Procedure permitting the above individuals to intervene by permission of the Court herein as parties defendant and directing that the proposed Answer annexed hereto be filed herein as the answer of the above individuals; and

(3) granting to the above individuals such other and further relief as may be just.

Dated: New York, N. Y.

June 12, 1972

Yours, etc.

DAVIS POLK & WARDWELL

By /s/ PORTER R. CHANDLER  
A Member of the Firm

*Attorneys for Geraldine M. Boylan,  
Priscilla L. Cherry, Joan M. Ducey,  
Nora H. Ferguson, Angelina M.  
Ferrarella, Ernest B. Roos, Jr. and  
Adamina Ruiz*

1 Chase Manhattan Plaza  
New York, New York 10005  
Tel.: HA 2-3400

*Notice of Motion for Leave to Intervene*

To:

LEO PFEFFER, Esq.

*Attorney for Plaintiffs*

15 East 84th Street

New York, New York 10028

HONORABLE LOUIS J. LEFKOWITZ

*Attorney General of the State of New York*

Mrs. Jean M. Coon

*Assistant Solicitor General*

*Attorneys for Defendants*

80 Centre Street

New York, New York 10007

*Affidavit of Porter R. Chandler in Support of  
Motion to Intervene*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

72 Civ. 2286

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[TITLE OMITTED IN PRINTING]

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STATE OF NEW YORK,  
COUNTY OF NEW YORK, ss.:

PORTER R. CHANDLER, being duly sworn, says:

1. I am an attorney and member of the bar of this Court and a member of the firm of Davis Polk & Wardwell, attorneys for Geraldine M. Boylan, 3445 Holland Avenue, Bronx, New York 10467, Priscilla L. Cherry, 660 Willoughby Avenue, Brooklyn, New York 11206, Joan M. Ducey, 3226 Country Club Road, Bronx, New York 10465, Nora H. Ferguson, 238 Linden Boulevard, Brooklyn, New York 11226, Angelina M. Ferrarella, 1945 West 7th Street, Brooklyn, New York 11223, Ernest E. Roos, Jr., 155-19 Jewel Avenue, Flushing, New York 11367 and Adamina Ruiz, 955 Evergreen Avenue, Bronx, New York 10472, and I am fully familiar with the facts and circumstances herein. I make this affidavit in support of their motion to intervene as defendants in the above-entitled action pursuant to Rule 24 of the Federal Rules of Civil Procedure.

*Affidavit of Porter R. Chandler in Support of  
Motion to Intervene*

2. On May 22, 1972, Governor Rockefeller signed into law an "Act to amend the education law, in relation to health, welfare and safety grants for pupils in nonpublic schools; to establish an elementary and secondary education opportunity program of tuition reimbursement for parents of low income; to amend the tax law, in relation to a modification of federal adjusted gross income for parents of nonpublic school children; and to amend the education law, in relation to impacted aid for school districts and the purchase of existing structures to be used for school buildings," [1972] Laws of New York, ch. 414 (the "Act").
3. On May 25, 1972, this action was commenced by the Committee for Public Education and Religious Liberty and 19 individual plaintiffs, all of whom allegedly are citizens of the United States, reside in New York and pay taxes in and to the State of New York. Plaintiffs Adams, Brooks, Chanin, Cowen, Lewis, Neier and Shanker allegedly have children attending New York public schools.
4. The defendants are the Commissioner of Education, the Comptroller and the Commissioner of Taxation and Finance of the State of New York and are sued in those capacities.
5. The specific relief requested in the complaint is "(1) [t]hat a three-judge court be convened as provided in Title 28, Sections 2281 and 2283 of the United States Code to declare unconstitutional and enjoin the enforcement of the Act, as hereinbefore set forth; (2) [t]hat the defendants

*Affidavit of Porter R. Chandler in Support of  
Motion to Intervene*

and each of them be enjoined from approving or paying any funds of the State of New York to schools owned or controlled by religious bodies or organized or engaged in the practice or teaching of religion or which limit, or give preference in, admission or employment to persons of a particular religious faith, whether such approval or payment is purported to be made pursuant to the aforesaid statute or otherwise; (3) [t]hat the defendants and each of them be enjoined from approving or paying any funds of the State of New York to be used for payment of or reimbursement for tuition to schools owned or controlled by religious bodies or organized or engaged in the practice or teaching of religion or which limit, or give preference in, admission or employment to persons of a particular religious faith, whether such approval or payment is purported to be made pursuant to the aforesaid statute or otherwise; (4) [t]hat the defendants and each of them be enjoined from according New York State tax benefits for tuition paid to schools owned or controlled by religious bodies or organized or engaged in the practice or teaching of religion or which limit, or give preference in, admission or employment to persons of a particular religious faith, whether such tax benefits are purported to be made pursuant to the aforesaid statute or otherwise; [and] (5) [t]hat a preliminary injunction pending the trial of the issues be granted to the plaintiffs against the defendants for the relief sought herein."

6. Plaintiffs noticed a motion for June 6, 1972 for a temporary restraining order, the convening of a three-

*Affidavit of Porter R. Chandler in Support of  
Motion to Intervene*

judge District Court and a preliminary injunction, which motion was adjourned, upon consent, to June 20, 1972.

7. Section 2 of the Act requires the defendant Commissioner of Education to make tuition reimbursement payments to parents of pupils enrolled full-time in nonpublic schools whose New York taxable income is under five thousand dollars and who have paid \$20.00 or more tuition to such schools in a given calendar year.

8. I believe that Priscilla L. Cherry, Nora H. Ferguson and Adamina Ruiz qualify for tuition reimbursement payments pursuant to Section 2 of the Act, commencing after July 1, 1972.

9. Section 5 of the Act entitles an individual to subtract from his federal adjusted gross income, in modifying his New York adjusted gross income, a sliding-scale deduction multiplied by the number of his dependents, not exceeding three, attending a nonpublic school on a full-time basis for at least four months during the regular school year for the education of such dependents in grades one through twelve, provided such individual is allowed an exemption for such dependent under Section 616 of the New York Tax Law, has paid at least \$50.00 for each such dependent in tuition to such nonpublic school, has not claimed a tuition reimbursement payment pursuant to Section 2 of the Act and has a New York adjusted gross income, without the benefit of the foregoing modification, of less than twenty-five thousand dollars.



*Affidavit of Porter R. Chandler in Support of  
Motion to Intervene*

10. I believe that Geraldine M. Boylan, Joan M. Ducey, Angelina M. Ferguson and Ernest E. Roos, Jr. are entitled to a modification of their New York adjusted gross incomes pursuant to Section 5 of the Act, commencing on and after January 1, 1973.

11. The interlocutory and final relief plaintiffs seek would prevent the proposed intervenors and numerous other individuals similarly situated throughout the State of New York from exercising their rights under the Act.

12. To my knowledge, the present defendants are not now and will not be direct recipients of benefits conferred by the Act and are not now and will not be members of the class(es) for whose benefit the Act was enacted, so that the interests of the proposed intervenors and numerous other individuals similarly situated throughout the State of New York are not directly represented by the present defendants.

13. The proposed intervenors request to be made defendants in this action in order to represent their own interests and the interests of all those similarly situated.

14. The proposed intervention will not delay or prejudice the adjudication of the rights of the original parties, and the main action and the defenses of the proposed intervenors have common questions of law and fact.

15. I have been in personal contact with plaintiffs' attorney, Leo Pfeffer, Esq. and defendants' attorney, Mrs.

*Affidavit of Porter R. Chandler in Support of  
Motion to Intervene*

Jean M. Coon, Assistant Solicitor General of the State of New York, and I have informed them of the proposed intervention herein. They stated to me that they do not and will not oppose the present motion.

16. In accordance with subsection (c) of Rule 24 of the Federal Rules of Civil Procedure, appended hereto as Exhibit A is a proposed pleading setting forth the defenses for which intervention is sought.

WHEREFORE, it is respectfully requested that the motion of Geraldine M. Boylan, Priscilla L. Cherry, Joan M. Ducey, Nora H. Ferguson, Angelina M. Ferrarella, Ernest E. Roos, Jr. and Adamina Ruiz to intervene as defendants in this action be granted, that they be given leave to assert by motion or otherwise the defenses set forth in the proposed pleading appended hereto as Exhibit A and to take part in all future proceedings in this action and that they be granted such other, further and different relief as to this Court may seem just and proper.

/s/ PORTER R. CHANDLER

-----  
Porter R. Chandler

[Jurat omitted in printing]

*Affidavit of Geraldine M. Boylan in Support of  
Motion to Intervene*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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[TITLE OMITTED IN PRINTING]

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STATE OF NEW YORK,  
COUNTY OF BRONX, ss.:

GERALDINE M. BOYLAN, being duly sworn, says:

1. I am a resident and citizen of the State of New York.
2. My address is 3445 Holland Avenue, Bronx, New York 10467.
3. I am the mother of two daughters, Colleen A. Boylan and Maureen P. Boylan, both of whom reside with me and are my "dependents" within the meaning of Section 152 of the Internal Revenue Code.
4. Since September, 1971, my daughter Colleen A. Boylan has been continuously enrolled full-time in the 9th grade at St. Helena High School, 915 Hutchinson River Parkway, Bronx, New York 10465 for which I have paid tuition in the amount of \$50.00 per month.
5. For the last several years, my daughter Maureen P. Boylan has been continuously enrolled full-time in Immaculate Conception school, 754 Gunhill Road, Bronx, New York 10467 for which I have paid tuition in the approximate amount of \$20.00 per month.

*Affidavit of Geraldine M. Boylan in  
Support of Motion to Intervene*

6. My husband and I had a New York adjusted gross income of less than twenty-five thousand dollars and a New York taxable income in excess of five thousand dollars for the calendar year 1971.

7. I have been informed by my attorneys, Davis Polk & Wardwell, that Section 5 of Chapter 414 of the 1972 Laws of New York, New York Tax Law §612(j) entitles me to a modification of my New York adjusted gross income for payment of nonpublic school tuition.

8. My attorneys have further informed me that an action, captioned above, has been brought wherein the plaintiffs seek to permanently enjoin the enforcement of Chapter 414 of the 1972 Laws of New York (the "Act").

9. To my knowledge, the present defendants are not now and will not be direct recipients of benefits conferred by the Act now challenged and are not now and will not be members of the class(es) for whose benefit the Act was enacted, and I therefore believe that the defendants will not adequately represent my interests and that I am so situated that I could suffer irreparable harm unless I am permitted to intervene in the action as a party defendant.

WHEREFORE, I respectfully request that my motion to intervene in the action pursuant to Rule 24 of the Federal Rules of Civil Procedure be granted.

/s/ GERALDINE M. BOYLAN

-----  
Geraldine M. Boylan

[Jurat omitted in printing]

*Affidavit of Priscilla L. Cherry in  
Support of Motion to Intervene*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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[TITLE OMITTED IN PRINTING]

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STATE OF NEW YORK,  
COUNTY OF KINGS, ss.:

PRISCILLA L. CHERRY, being duly sworn, says:

1. I am a resident and citizen of the State of New York.
2. My address is 660 Willoughby Avenue, Brooklyn, New York 11206.
3. I am the mother of two sons, Reginald Spivey Cherry, age 16, and Anthony R. Cherry, age 15, both of whom reside with me and are my "dependents" within the meaning of Section 152 of the Internal Revenue Code.
4. Since September, 1971, both of my sons have been continuously enrolled in the New Catholic High School, 81 Lewis Avenue, Brooklyn, New York 11206 for which I have paid tuition in the amount of approximately \$500.00.
5. I had a New York taxable income of less than five thousand dollars for the calendar year 1971.
6. I have been informed by my attorneys, Davis Polk & Wardwell, that Section 2 of Chapter 414 of the 1972 Laws of

*Affidavit of Priscilla L. Cherry in  
Support of Motion to Intervene*

New York, New York Education Law art. 12-A entitles me to tuition reimbursement payments.

7. My attorneys have further informed me that an action, captioned above, has been brought wherein the plaintiffs seek to permanently enjoin the enforcement of Chapter 414 of the 1972 Laws of New York (the "Act").

8. To my knowledge, the present defendants are not now and will not be direct recipients of benefits conferred by the Act now challenged and are not now and will not be members of the class(es) for whose benefit the Act was enacted, and I therefore believe that the defendants will not adequately represent my interests and that I am so situated that I could suffer irreparable harm unless I am permitted to intervene in the action as a party defendant.

WHEREFORE, I respectfully request that my motion to intervene in the action pursuant to Rule 24 of the Federal Rules of Civil Procedure be granted.

/s/ MRS. PRISCILLA L. CHERRY

-----  
Priscilla L. Cherry

[Jurat omitted in printing]

*Affidavit of Joan M. Ducey in Support  
of Motion to Intervene*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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[TITLE OMITTED IN PRINTING]

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STATE OF NEW YORK,  
COUNTY OF BRONX, ss.:

JOAN M. DUCEY, being duly sworn, says:

1. I am a resident and citizen of the State of New York.
2. My address is 3226 Country Club Road, Bronx, New York 10465.
3. I am the mother of a son, Stephen G. Ducey, age 15, and a daughter, Carol A. Ducey, age 13, both of whom reside with me and are my "dependents" within the meaning of Section 152 of the Internal Revenue Code.
4. Since September, 1971, my son Stephen G. Ducey has been continuously enrolled full-time in the 9th grade at Cardinal Hayes High School, 149th Street and the Grand Concourse, Bronx, New York 10454 for which I have paid tuition in the amount of \$45.00 per month.
5. For the last several years, my daughter Carol A. Ducey has been continuously enrolled full-time in Our Lady of the Assumption school, 16-17 Parkview Avenue, Bronx, New York 10465 for which I have paid tuition in the approximate amount of \$10.00 per month.



*Affidavit of Joan M. Ducey in  
Support of Motion to Intervene*

6. My husband and I had a New York adjusted gross income of less than twenty-five thousand dollars and a New York taxable income in excess of five thousand dollars for the calendar year 1971.

7. I have been informed by my attorneys, Davis Polk & Wardwell, that Section 5 of Chapter 414 of the 1972 Laws of New York, New York Tax Law §612(j) entitles me to a modification of my New York adjusted gross income for payment of nonpublic school tuition.

8. My attorneys have further informed me that an action, captioned above, has been brought wherein the plaintiffs seek to permanently enjoin the enforcement of Chapter 414 of the 1972 Laws of New York (the "Act").

9. To my knowledge, the present defendants are not now and will not be direct recipients of benefits conferred by the Act now challenged and are not now and will not be members of the class(es) for whose benefit the Act was enacted, and I therefore believe that the defendants will not adequately represent my interests and that I am so situated that I could suffer irreparable harm unless I am permitted to intervene in the action as a party defendant.

WHEREFORE, I respectfully request that my motion to intervene in the action pursuant to Rule 24 of the Federal Rules of Civil Procedure be granted.

/s/ JOAN M. DUCEY

-----  
Joan M. Ducey

[Jurat omitted in printing]

*Affidavit of Angelina M. Ferrarella in Support  
of Motion to Intervene*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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[TITLE OMITTED IN PRINTING]

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STATE OF NEW YORK,  
COUNTY OF KINGS, ss.:

ANGELINA M. FERRARELLA, being duly sworn, says:

1. I am a resident and citizen of the State of New York.
2. My address is 1945 West 7th Street, Brooklyn, New York 11223.
3. I am the mother of a daughter, Susan A. Ferrarella, age 12, who resides with me and is my "dependent" within the meaning of Section 152 of the Internal Revenue Code.
4. Since September, 1971, my daughter has been continuously enrolled full-time in St. Simon & Jude school, 294 Avenue T, Brooklyn, New York 11223 for which I have paid tuition in the amount of approximately \$225.00.
5. My husband and I had a New York adjusted gross income of less than twenty-five thousand dollars and a New York taxable income in excess of five thousand dollars for the calendar year 1971.

*Affidavit of Angelina M. Ferrarella in  
Support of Motion to Intervene*

6. I have been informed by my attorneys, Davis Polk & Wardwell, that Section 5 of Chapter 414 of the 1972 Laws of New York, New York Tax Law §612(j) entitles me to a modification of my New York adjusted gross income for payment of nonpublic school tuition.

7. My attorneys have further informed me that an action, captioned above, has been brought wherein the plaintiffs seek to permanently enjoin the enforcement of Chapter 414 of the 1972 Laws of New York (the "Act").

8. To my knowledge, the present defendants are not now and will not be direct recipients of benefits conferred by the Act now challenged and are not now and will not be members of the class(es) for whose benefit the Act was enacted, and I therefore believe that the defendants will not adequately represent my interests and that I am so situated that I could suffer irreparable harm unless I am permitted to intervene in the action as a party defendant.

WHEREFORE, I respectfully request that my motion to intervene in the action pursuant to Rule 24 of the Federal Rules of Civil Procedure be granted.

/s/ ANGELINA M. FERRARELLA

.....  
Angelina M. Ferrarella

[Jurat omitted in printing]

*Affidavit of Nora H. Ferguson in  
Support of Motion to Intervene*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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[TITLE OMITTED IN PRINTING]

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STATE OF NEW YORK,  
COUNTY OF KINGS, ss.:

NORA H. FERGUSON, being duly sworn, says:

1. I am a resident and citizen of the State of New York.
2. My address is 238 Linden Boulevard, Brooklyn, New York 11226.
3. I am the mother of a daughter, Maryann E. Ferguson, age 14, who resides with me and is my "dependent" within the meaning of Section 152 of the Internal Revenue Code.
4. Since September, 1971, my daughter has been continuously enrolled full-time in the 9th grade at Bishop McDonald Memorial High School, 260 Eastern Parkway, Brooklyn, New York for which I have paid tuition in the amount of \$700.00.
5. I had a New York taxable income of less than five thousand dollars for the calendar year 1971.
6. I have been informed by my attorneys, Davis Polk & Wardwell, that Section 2 of Chapter 414 of the 1972 Laws

*Affidavit of Nora H. Ferguson in  
Support of Motion to Intervene*

of New York, New York Education Law art. 12-A entitles me to tuition reimbursement payments.

7. My attorneys have further informed me that an action, captioned above, has been brought wherein the plaintiffs seek to permanently enjoin the enforcement of Chapter 414 of the 1972 Laws of New York (the "Act").

8. To my knowledge, the present defendants are not now and will not be direct recipients of benefits conferred by the Act now challenged and are not now and will not be members of the class(es) for whose benefit the Act was enacted, and I therefore believe that the defendants will not adequately represent my interests and that I am so situated that I could suffer irreparable harm unless I am permitted to intervene in the action as a party defendant.

WHEREFORE, I respectfully request that my motion to intervene in the action pursuant to Rule 24 of the Federal Rules of Civil Procedure be granted.

/s/ NORA H. FERGUSON

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Nora H. Ferguson

[Jurat omitted in printing]

*Affidavit of Ernest E. Roos, Jr. in  
Support of Motion to Intervene*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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[TITLE OMITTED IN PRINTING]

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STATE OF NEW YORK,  
COUNTY OF QUEENS, ss.:

ERNEST E. ROOS, JR., being duly sworn, says:

1. I am a resident and citizen of the State of New York.
2. My address is 155-19 Jewel Avenue, Apartment 2C, Flushing, New York 11367.
3. I am the father of three daughters, Verlie M. Roos, age 14, Roslyn M. Roos, age 10, and Janet E. Roos, age 9, all of whom reside with me and are my "dependents" within the meaning of Section 152 of the Internal Revenue Code.
4. Since September, 1971, my daughter Verlie M. Roos has been continuously enrolled full-time in the 9th grade at St. Helena High School, 915 Hutchinson River Parkway, Bronx, New York 10465 for which I have paid tuition in the amount of \$50.00 per month.
5. For the last several years, my daughters Roslyn M. Roos and Janet E. Roos have been continuously enrolled full-time in St. Nicholas of Tolentine School, 80-22 Parsons Boulevard, Jamaica, New York 11432 for which I have paid tuition in the approximate amount of \$150.00 per school year.

*Affidavit of Ernest E. Roos, Jr. in  
Support of Motion to Intervene*

6. My wife and I had a New York adjusted gross income of less than twenty-five thousand dollars and a New York taxable income in excess of five thousand dollars for the calendar year 1971.

7. I have been informed by my attorneys, Davis Polk & Wardwell, that Section 5 of Chapter 414 of the 1972 Laws of New York, New York Tax Law § 612(j) entitles me to a modification of my New York adjusted gross income for payment of nonpublic school tuition.

8. My attorneys have further informed me that an action, captioned above, has been brought wherein the plaintiffs seek to permanently enjoin the enforcement of Chapter 414 of the 1972 Laws of New York (the "Act").

9. To my knowledge, the present defendants are not now and will not be direct recipients of benefits conferred by the Act now challenged and are not now and will not be members of the class(es) for whose benefit the Act was enacted, and I therefore believe that the defendants will not adequately represent my interests and that I am so situated that I could suffer irreparable harm unless I am permitted to intervene in the action as a party defendant.

WHEREFORE, I respectfully request that my motion to intervene in the action pursuant to Rule 24 of the Federal Rules of Civil Procedure be granted.

/s/ ERNEST E. ROOS, JR.

Ernest E. Roos, Jr.

[Jurat omitted in printing]



*Affidavit of Adamina Ruiz in  
Support of Motion to Intervene*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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[TITLE OMITTED IN PRINTING]

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STATE OF NEW YORK,  
COUNTY OF BRONX, ss.:

ADAMINA RUIZ, being duly sworn, says:

1. I am a resident and citizen of the State of New York.
2. My address is 955 Evergreen Avenue, Bronx, New York 10472.
3. I am the mother of two daughters, Evelyn Ruiz, age 17, and Myrna Ruiz, age 15, both of whom reside with me and are my "dependents" within the meaning of Section 152 of the Internal Revenue Code.
4. Since September, 1971, my daughter Evelyn Ruiz has been continuously enrolled full-time in the 11th grade at Cathedral High School, 560 Lexington Avenue, New York, New York for which I have paid tuition in the amount of \$20.00 per month.
5. Since September, 1971, my daughter Myrna Ruiz has been continuously enrolled full-time in the 10th Grade at St. Peter & Paul School, 828 Brook Avenue, Bronx, New

*Affidavit of Adamina Ruiz in  
Support of Motion to Intervene*

York for which I have paid tuition in the amount of \$20.00 per month.

6. My husband and I had a New York taxable income of less than five thousand dollars for the calendar year 1971.

7. I have been informed by my attorneys, Davis Polk & Wardwell, that Section 2 of Chapter 414 of the 1972 Laws of New York, New York Education Law art. 12-A entitles me to tuition reimbursement payments.

8. My attorneys have further informed me that an action, captioned above, has been brought wherein the plaintiffs seek to permanently enjoin the enforcement of Chapter 414 of the 1972 Laws of New York (the "Act").

9. To my knowledge, the present defendants are not now and will not be direct recipients of benefits conferred by the Act now challenged and are not now and will not be members of the class(es) for whose benefit the Act was enacted, and I therefore believe that the defendants will not adequately represent my interests and that I am so situated that I could suffer irreparable harm unless I am permitted to intervene in the action as a party defendant.

WHEREFORE, I respectfully request that my motion to intervene in the action pursuant to Rule 24 of the Federal Rules of Civil Procedure be granted.

/s/ ADAMINA RUIZ

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Adamina Ruiz

[Jurat omitted in printing]

*Exhibit A Annexed to Motion to Intervene*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

72 Civ. 2286

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COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY,  
 BERT ADAMS, BERNARD BACKER, ALGERNON D. BLACK,  
 THEODORE BROOKS, HERSCHEL CHANIN, NAOMI A. COWEN,  
 ROBERT B. ESSEX, FLORENCE FLAST, REBECCA GOLDBLUM,  
 BENJAMIN HAIBLUM, MARTHA LATIES, BLANCHE LEWIS,  
 ELLEN A. MEYER, EDWARD D. MOLDOVER, ARYEH NEIER,  
 DAVID SEELEY, ALBERT SHANKER, HOWARD M. SQUADRON,  
 and CHARLES H. SUMNER,

*Plaintiffs,*

—against—

EWALD B. NYQUIST, as Commissioner of Education of the  
 State of New York, ARTHUR LEVITT, as Comptroller of  
 the State of New York, and NORMAN GALLMAN, as Com-  
 missioner of Taxation and Finance of the State of  
 New York,

*Defendants.*

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ANSWER OF INTERVENOR-DEFENDANTS

Intervenor-defendants Geraldine M. Boylan, 3445 Hol-  
 land Avenue, Bronx, New York 10467, Priscilla L. Cherry,  
 660 Willoughby Avenue, Brooklyn, New York 11206, Joan  
 M. Ducey, 3226 Country Club Road, Bronx, New York

*Exhibit A Annexed to Motion to Intervene*

10465, Nora H. Ferguson, 238 Linden Boulevard, Brooklyn, New York 11226, Angelina M. Ferrarella, 1945 West 7th Street, Brooklyn, New York 11223, Ernest E. Roos, Jr., 155-19 Jewel Avenue, Flushing, New York 11367 and Adamina Ruiz, 955 Evergreen Avenue, Bronx, New York 10472, by their attorneys, Davis Polk & Wardwell, on their own behalf and on behalf of all other individuals similarly situated in the State of New York, for their answer to the complaint herein:

1. Deny paragraph 1, except admit that this is a civil action, that it is purportedly brought on behalf of all the plaintiffs named in the complaint and that it seeks preliminary and permanent injunctions.
2. Deny paragraphs 2 and 3.
3. State that they are without knowledge or information sufficient to form a belief as to the truth of paragraphs 4 and 5.
4. Admit paragraphs 6 and 7.
5. Deny paragraphs 8, 9, 10 and 11.
6. State that they are without knowledge or information sufficient to form a belief as to the truth of paragraph 12.
7. Admit paragraph 13.
8. Deny paragraphs 14, 15, 16 and 17.

*Exhibit A Annexed to Motion to Intervene*

**FIRST AFFIRMATIVE DEFENSE**

9. This court lacks jurisdiction over the subject matter of this action.

**SECOND AFFIRMATIVE DEFENSE**

10. The complaint fails to state a claim upon which relief can be granted.

**THIRD AFFIRMATIVE DEFENSE**

11. Plaintiffs' action seeks relief in violation of intervenor-defendants' right to the free exercise of religion, as guaranteed by the First and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the Constitution of the State of New York.

**FOURTH AFFIRMATIVE DEFENSE**

12. Plaintiffs' action seeks relief in violation of intervenor-defendants' right to the equal protection of the laws, as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 11 of the Constitution of the State of New York.

**FIFTH AFFIRMATIVE DEFENSE**

13. Plaintiffs' action seeks to deprive intervenor-defendants of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States

*Exhibit A Annexed to Motion to Intervene*

Constitution and Article I, Section 6 of the Constitution of the State of New York.

WHEREFORE, intervenor-defendants demand judgment dismissing plaintiffs' complaint and granting to said intervenor-defendants such other and further relief as may be just.

Dated: New York, New York  
June 12, 1972

DAVIS POLK & WARDWELL

By /s/ PORTER R. CHANDLER

A Member of the Firm

*Attorneys for Intervenor-defendants*

1 Chase Manhattan Plaza

New York, New York 10005

Tel.: HA 2-3400

**Order to Show Cause and Affidavit in Support  
of Application for Leave to Intervene**

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF NEW YORK**

**72 Civ. 2286**

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COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY,  
BERT ADAMS, BERNARD BACKER, ALGERNON D. BLACK,  
THEODORE BROOKS, HERSCHEL CHANIN, NAOMI A. COWEN,  
ROBERT B. ESSEX, FLORENCE FLAST, REBECCA GOLDBLUM,  
BENJAMIN HAIBLUM, MARTHA LATIES, BLANCHE LEWIS,  
ELLEN A. MEYER, EDWARD D. MOLDOVER, ARYEH NEIER,  
DAVID SEELEY, ALBERT SHANKER, HOWARD M. SQUADRON,  
and CHARLES H. SUMNER,

*Plaintiffs,*

**—against—**

EWALD B. NYQUIST, as Commissioner of Education of the  
State of New York, ARTHUR LEVITT, as Comptroller of  
the State of New York, and NORMAN GALLMAN, as Com-  
missioner of Taxation and Finance of the State of  
New York,

*Defendants.*

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Upon the annexed motion of Earl W. Brydges and the  
affidavit of John F. Haggerty and Louis P. Contiguglia,  
sworn to the 15th day of June, 1972 and the proposed an-  
swer annexed thereto and upon all prior proceedings here-  
tofore had herein, it is hereby:



*Order to Show Cause and Affidavit in Support  
of Application for Leave to Intervene*

ORDERED, that the plaintiffs and the defendants herein show cause before this Court, at Room 506 of the United States Court House, Foley Square, New York, New York at 10 o'clock in the forenoon on the 20th day of June, why an order pursuant to Rule 24 should not issue allowing Senator Earl W. Brydges, President Pro Tem and Majority Leader of the New York State Senate, to intervene in this case as a party defendant in his representative capacity and that he have all the rights and standing of a party on the grounds that in his representative capacity and on behalf of the New York State Senate he has a direct, vital and paramount interest in the subject matter of this action, that in his representative capacity as party defendant the disposition of this action may as a practical matter impair or impede his ability to protect the interests of the Senate of the State of New York and on the ground that the applicant's interests are not presently and adequately represented herein in view of the fact that only the Legislature can develop the issues which must be inherent in any determination of this Court; and it is further

ORDERED that personal service of a copy of this order and the papers upon which it was granted, by the close of business 6 PM on the 16th day of June, 1972, upon the attorneys appearing for each of the named parties herein, shall constitute due and sufficient service of this order.

Dated: New York, New York  
June 16, 1972

/s/ IRVING BEN COOPER  
U.S.D.J.

*Order to Show Cause and Affidavit in Support  
of Application for Leave to Intervene*

To:

LEO PFEFFER, Esq.

*Attorney for Plaintiffs*

15 East 84th Street

New York, New York 10028

HONORABLE LOUIS J. LEFKOWITZ

*Attorney General of the State of New York*

Mrs. Jean M. Coon

*Assistant Solicitor General*

PORTER R. CHANDLER, Esq.

One Chase Manhattan Plaza

New York, New York 10005

*Affidavit of John F. Haggerty and Louis P. Contiguglia  
in Support of Application for Leave to Intervene*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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[TITLE OMITTED IN PRINTING]

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State of New York,  
County of Albany, ss.:

JOHN F. HAGGERTY and LOUIS P. CONTIGUGLIA, being individually duly sworn, depose and say:

1) Each is an attorney licensed to practice law in the State of New York, and each is a Counsel to the Senate of the State of New York and to Senator Earl W. Brydges, the Majority Leader and President Pro Tem of the New York State Senate, and that each deponent makes this affidavit in support of the order to show cause why, in his representative capacities for and on behalf of the Senate of the State of New York and as Majority Leader and President Pro Tem of the New York State Senate, Senator Earl W. Brydges should not be allowed to intervene in this case as party defendant.

2) Senator Earl W. Brydges is also a citizen of the United States of America and a resident of the State of New York. As a citizen, a State legislator, Majority Leader of the State Senate and President Pro Tem of one of the two legislative bodies of the New York State Legislature,

*Affidavit of John F. Haggerty and Louis P. Contiguglia  
in Support of Application for Leave to Intervene*

Senator Earl W. Brydges has a paramount interest in common with the other members of the New York State Senate in upholding the constitutionality of Chapter 414 of the 1972 Laws of New York. The purpose for the intervention of Senator Earl W. Brydges in this action is to protect the interest of the New York State Legislature in the exercise of its constitutional right to a free and open debate of any subject or issue, no matter how politically divisive it may be on segments of our society. The exercise of this right has been curtailed by recent Federal court decisions involving issues similar to those in this law suit. Those decisions have expressly, and by innuendo, curtailed the rights of State legislative bodies to freely and openly debate issues which are "potentially divisive." The basis of these Federal court decisions is the opinion of the United States Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). In that case the Court observed that:

"Ordinarily, political debate and division, however vigorous or even partisan, are normal manifestation of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect."

"The potential divisiveness of such conflict is a threat to the normal political process."

The Supreme Court issued this pronouncement in declaring unconstitutional a Pennsylvania law providing public

*Affidavit of John F. Haggerty and Louis P. Contiguglia  
in Support of Application for Leave to Intervene*

funds for teaching non-religious courses in private schools. In so ruling the Court acknowledged its chief concern was not whether the law aided religion, but that it involved "excessive entanglement" of religion in government. This entanglement, the Court concluded, violated the First Amendment provision of separation of church and state. The Court implied that this excessive entanglement exists in the normal political activity of our legislative bodies when considering issues which peripherally touch upon a religious question. The Supreme Court's reaction in *Lemon v. Kurtzman* to entanglement of religion and government cannot be taken as a "passing fancy." In recent months other Federal courts have relied upon the pronouncement in the *Lemon* case to curtail efforts by various legislative bodies throughout the country to seek solutions to the fiscal plight of nonpublic schools.

For example, in March of this year a three-panel Federal court declared unconstitutional a Vermont law which partially reimbursed public school teachers for teaching non-religious courses in parochial schools. (*Americans United for Separation of Church and State v. Oakey*, 40 L.W. 2597 (1972)). The court noted:

"Any such involvement carries with it the explosive potential for citizen friction and political sub-division along religious lines."

Similar restrictions on the freedom of state legislatures to debate issues involving religious overtones was evidenced in the month of March of this year when Federal courts in Pennsylvania and Ohio struck down laws reimbursing

*Affidavit of John F. Haggerty and Louis P. Contiguglia  
in Support of Application for Leave to Intervene*

parents for children's tuition payments in private schools. (*Wolman v. Essex*, USDC, SE Dist., Ohio (1972)). Particularly significant is the decision of the Federal court in Ohio, which states, in part, that the plan

"... contains the seeds for increased political involvement along religious lines at every level of government. . . . To uphold this statute would be to introduce the religious issue to the very center of state politics. . . . the political issue will be an expansive one . . . with the result that the issue will be joined along sharply drawn religious lines."

A three-panel Federal district court in the Southern District of New York in March of this year has likewise implied that restrictions are imposed on the freedom of the state legislature to debate legislation touching on religious issues. (*Committee for Public Education and Religious Liberty v. Rockefeller*, USDC, So. Dist., N.Y. (1972)). The majority decision noted that

"... it is reasonable to assume that state assistance will result in the aggravation of divisive political activity on the part of supporters and opponents."

The pronouncement of the Supreme Court in the *Lemon* case, as applied in this line of recent Federal cases, has been resorted to with devastating consequences. Underway is a dangerous trend to restrict the freedom historically enjoyed by the New York State Legislature and other legislative bodies to respond to diverse problems,



*Affidavit of John F. Haggerty and Louis P. Contiguglia  
in Support of Application for Leave to Intervene*

which by necessity demands free and open discussion of every conceivable issue. As noted by Judge Edmund Palmieri in his dissent in the Southern District of New York case,

"Government and political activity should play a part in searching for ways . . . that will preserve, and indeed promote, the diversity of individual beliefs—political, social and religious—that distinguish us so plainly from certain uniform, unified and ungoverned societies elsewhere in the world."

In the event that this concept curtailing legislative debate is continued in this action, no longer will legislative bodies operate as a forum for free and open discussion. Indeed there is a danger that the resolution of peculiarly volatile issues will no longer continue within the framework of our democratic process. It is submitted that the unfortunate trend that may develop from these recent Federal court decisions is to encourage elements of our society to seek solutions to our social, political and economic problems in a manner that is "extra-legal."

3) On information and belief, the interests of the New York State Legislature may not be adequately represented by the named government-party defendants in this action. The primary concern of the named party defendants is to uphold the payments authorized by Chapter 414 of the 1972 Laws of New York. The interest of Senator Earl W. Brydges, as intervenor in his representative capacity as leader of one of the two major Houses of the New York State Legislature, is much broader.



*Affidavit of John F. Haggerty and Louis P. Contiguglia  
in Support of Application for Leave to Intervene*

The Courts of the United States have attempted to exercise a jurisdiction so large and so great in terms of breadth and width, that sometimes those who serve in the States of the Union lose track of the fact that the Federal Government is not the paramount body in the United States of America. In the Federal Government and its Judiciary does not repose the sovereignty, except to the extent that the States have given it to them. The sovereignty of the individual and of the States under the reserved powers concept (U.S. Constitution Articles IX and X) reposes not there but with the States, and the fact that the States do have this residuum of sovereignty makes theirs the responsibility of preserving that which remains.

It is beyond the authority of the courts of the United States to dictate to the sovereign legislatures of the several states the parameters of its debate. Clearly, the states have allowed and authorized the courts of the United States to pass upon the constitutional issues of our final product, the statutes which we pass. But nowhere can be found the authority for the courts to dictate that which would be the subject of colloquy.

Only the Legislature can address itself to this question and it is beyond the possibility or reach of their respective offices for the three-named defendants in this action to give any consideration or representation on this issue. Your applicant in his representative capacity as President Pro Tem of the New York State Senate and as its Majority Leader, empowered by its own rules to control the proceedings and debate within the body, is the only one so situated as to fairly and adequately come to grips with this question.

*Affidavit of John F. Haggerty and Louis P. Contiguglia  
in Support of Application for Leave to Intervene*

4) It is indeed questionable whether the named government defendants are truly the real parties in interest in this action. Under the Constitution of the State of New York, it would seem clear that it is the Legislature, and the Legislature only, that is so situated as to claim the paramount interest relating to the property or transaction which is the subject of this law suit. It is peculiarly the Legislature's interest that the disposition of this action may as a practical matter impair or impede.

The first-named defendant, EWALD B. NYQUIST, is the Commissioner of Education of the State of New York. Pursuant to Article V Section 4 of the New York State Constitution, he is appointed by the Board of Regents of the State of New York. The powers and authority of the Board of Regents of the State of New York, pursuant to the Constitution of the State of New York, Article XI Section 2, may be increased, modified or diminished by the Legislature. Section 1 of Article XI of the New York State Constitution charges the Legislature of the State of New York with the maintenance and support of a system of free common schools wherein all the children of this State may be educated. It would appear then to be beyond question that the ultimate responsibility both for determining educational policy and for providing for the education of the children of the State of New York is with the Legislature and not the Commissioner of Education of the State of New York.

The second-named defendant, ARTHUR LEVITT, as Comptroller of the State of New York, is charged simply with the responsibility of auditing claims and vouchers filed with or against New York State. His participation in this proceed-

*Affidavit of John F. Haggerty and Louis P. Contiguglia  
in Support of Application for Leave to Intervene*

ing is simply in the capacity of a "paymaster" without responsibility for the formulation of educational policies within the State of New York or the education of the children of the State of New York.

The third-named defendant, NORMAN F. GALLMAN, as Commissioner of Taxation and Finance, likewise exercises an administrative role in carrying out the procedural tax administrative acts embodied within the legislative enactments providing for aid to nonpublic school children.

It is claimed in this action that the State statute under attack involves the expenditure of public funds in support of religious purposes. The determination of how public funds should be expended is a coordinate responsibility of the Legislature and the Executive Branch of government and does not in any way involve the three-named defendants herein. It should be noted that under the Constitution of the State of New York, the Legislature has even the ultimate say as to how public monies should be expended, in that the Governor submits a proposed budget to the Legislature which the Legislature may or may not adopt in whole or in part and a rejection of any of the parts by the Legislature is final on the question.

It would be singularly the responsibility of the Legislature of the State of New York to impose the necessary taxes to raise revenues to support the educational burden that would be created by a sudden, precipitous and catastrophic closing of the nonpublic schools of this State which presently educate approximately 800,000 children or 20% of all children attending schools in our State. Such fiscal and political consequences can be fully appreciated and evaluated only by the Legislature.

*Affidavit of John F. Haggerty and Louis P. Contiguglia  
in Support of Application for Leave to Intervene*

Thus, it is submitted that the entity that has the foremost interests in the subject matter of this action is the Legislature of the State of New York and it is in his capacity as a primary representative of that entity that your applicant seeks to intervene in this action. Only your applicant can adequately develop and represent to this court the three paramount issues inherent in any determination of this action:

(i) The reserved sovereign power of the Legislature of the State of New York to uninhibited and untrammelled debate.

(ii) The responsibility for the development of educational policy and the education of the children within the State of New York.

(iii) The responsibility of raising taxes to support a system of education in the State of New York.

5) Your deponents in requesting this court to allow intervention on behalf of the applicant in this action assures this court that the applicant or anyone acting on his behalf will not delay or prejudice the adjudication of the rights of the original parties. We are ready to proceed forthwith.

6) The reason this application is made by order to show cause and not by notice of motion is that a request is made that this matter be made returnable on Tuesday, June 20, 1972. Upon information and belief your deponents are advised that another proceeding in this action is returnable in this court on that date and it is requested that this application for intervention be made returnable at that time so

*Affidavit of John F. Haggerty and Louis P. Contiguglia  
in Support of Application for Leave to Intervene*

that it may be disposed of by this court on that date and that your deponents on behalf of Senator Earl W. Brydges be allowed to participate in those other proceedings in this action on that date.

7) In accordance with Rule 24(c) of the Federal Rules of Civil Procedure, annexed hereto as Exhibit A, is a proposed pleading setting forth the defenses for which intervention is sought.

8) No previous application has been made to any court or any judge for the relief requested herein.

WHEREFORE, it is requested that Senator Earl W. Brydges as Majority Leader and President Pro Tem of the New York State Senate be allowed to intervene in this case as a party defendant, or in such representative capacity, and on behalf of other senators in the New York State Senate similarly situated, that he have all the rights and standing of the party, and for such other and further relief as to this Court may seem just and proper.

/s/ JOHN F. HAGGERTY

-----  
JOHN F. HAGGERTY

/s/ LOUIS P. CONTIGUGLIA

-----  
LOUIS P. CONTIGUGLIA

[Jurat omitted in printing]

*Exhibit A Annexed to Affidavit of  
John F. Haggerty and Louis P. Contiguglia*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

72 Civ. 2286

---

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY,  
BERT ADAMS, BERNARD BACKER, ALGERNON D. BLACK,  
THEODORE BROOKS, HERSCHEL CHANIN, NAOMI A. COWEN,  
ROBERT B. ESSEX, FLORENCE FLAST, REBECCA GOLDBLUM,  
BENJAMIN HAIBLUM, MARTHA LATIES, BLANCHE LEWIS,  
ELLEN A. MEYER, EDWARD D. MOLDOVER, ARYEH NEIER,  
DAVID SEELEY, ALBERT SHANKER, HOWARD M. SQUADRON,  
AND CHARLES H. SUMNER,

*Plaintiffs,*

—against—

EWALD B. NYQUIST, as Commissioner of Education of the  
State of New York, ARTHUR LEVITT, as Comptroller of  
the State of New York, and NORMAN GALLMAN, as Com-  
missioner of Taxation and Finance of the State of New  
York,

*Defendants,*

and

EARL W. BRYDGES, as Majority Leader and President Pro  
Tem of the New York State Senate,

*Intervenor-defendant*

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Intervenor-Defendant



*Exhibit A Annexed to Affidavit of  
John F. Haggerty and Louis P. Contiguglia*

Intervenor-defendant Earl W. Brydges, residing at Niagara Falls, New York, as Majority Leader and President Pro Tem of the New York State Senate, by his attorneys John F. Haggerty and Louis P. Contiguglia, in his representative capacity for and on behalf of the Senate of the State of New York and as Majority Leader and President Pro Tem of the New York State Senate, for his answer to the complaint herein:

1. Denies paragraph 1, except admits that this is a civil action, that it is purportedly brought on behalf of all the plaintiffs named in the complaint and that it seeks preliminary and permanent injunctions.

2. Denies paragraphs 2 and 3.

3. States that he is without knowledge or information sufficient to form a belief as to the truth of paragraphs 4 and 5.

4. Admits paragraphs 6 and 7.

5. Denies paragraphs 8, 9, 10 and 11.

6. States that he is without knowledge or information sufficient to form a belief as to the truth of paragraph 12.

7. Admits paragraph 13.

8. Denies paragraphs 14, 15, 16 and 17.

**FIRST DEFENSE**

9. This court lacks jurisdiction over the subject matter of this action.



*Exhibit A Annexed to Affidavit of  
John F. Haggerty and Louis P. Contiguglia*

SECOND DEFENSE

10. The complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

11. The federal government and its judiciary lack jurisdiction to proscribe the parameters of debate of the Legislature of the State of New York.

WHEREFORE, defendant Earl W. Brydges, in his representative capacity as Majority Leader and President Pro Tem of the Senate of the State of New York, demands a judgment and decree of this Court dismissing the complaint herein and declaring Chapter 414 of the New York Laws of 1972 to be constitutional.

Dated: Albany, New York  
June 15, 1972

/s/ JOHN F. HAGGERTY

-----  
John F. Haggerty

/s/ LOUIS P. CONTIGUGLIA

-----  
Louis P. Contiguglia  
Attorneys for Intervenor-  
Defendant Earl W. Brydges  
The Capitol  
Senate Chambers  
Albany, New York

**Order Granting Leave to Intervene**  
**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**  
**72 Civ. 2286**

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COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY,  
 BERT ADAMS, BERNARD BACKER, ALGERNON D. BLACK,  
 THEODORE BROOKS, HERSCHEL CHANIN, NAOMI A. COWEN,  
 ROBERT B. ESSEX, FLORENCE FLAST, REBECCA GOLDBLUM,  
 BENJAMIN HAIBLUM, MARTHA LATIES, BLANCHE LEWIS,  
 ELLEN A. MEYER, EDWARD D. MOLDOVER, ARYEH NEIER,  
 DAVID SEELEY, ALBERT SHANKER, HOWARD M. SQUADRON,  
 and CHARLES H. SUMNER,

*Plaintiffs,*

—against—

EWALD B. NYQUIST, as Commissioner of Education of the  
 State of New York, ARTHUR LEVITT, as Comptroller  
 of the State of New York, and NORMAN GALLMAN, as  
 Commissioner of Taxation and Finance of the State  
 of New York,

*Defendants.*

---

Geraldine M. Boylan, Priscilla L. Cherry, Joan M. Ducey,  
 Nora H. Ferguson, Angelina M. Ferrarella, Ernest E.  
 Roos, Jr. and Adamina Ruiz having moved to intervene  
 as parties defendant in this action pursuant to Rule 24  
 of the Federal Rules of Civil Procedure, and the Court

*Order Granting Leave to Intervene*

having considered said motion, the affidavits of the proposed intervenors, the Affidavit of Porter R. Chandler, sworn to June 12, 1972, and the proposed Answer of the aforesaid intervenors, and it appearing to the Court that notice of said motion has been duly served on all parties to this action, that none of such parties is opposed to the proposed intervention and that the proposed intervenors are entitled to become parties and should be permitted to intervene as defendants in this action, and the Court being fully advised in the premises;

Now, it is hereby

ORDERED that Geraldine M. Boylan, Priscilla L. Cherry, Joan M. Ducey, Nora H. Ferguson, Angelina M. Ferrarella, Ernest E. Roos, Jr. and Adamina Ruiz be, and each of them hereby is, granted leave to intervene in this action as a party defendant; and it is further

ORDERED that the proposed Answer of intervenor-defendants heretofore served on all other parties to this action be filed with the Clerk of this Court as the answer of said intervenor-defendants to plaintiff's complaint; and it is further

ORDERED that the official caption of this action be, and it hereby is, amended to read as follows:

*Order Granting Leave to Intervene*

## UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

72 Civ. 2286

---

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY,  
BERT ADAMS, BERNARD BACKER, ALGERNON D. BLACK,  
THEODORE BROOKS, HERSCHEL CHANIN, NAOMI A. COWEN,  
ROBERT B. ESSEX, FLORENCE FLAST, REBECCA GOLDBLUM,  
BENJAMIN HAIBLUM, MARTHA LATIES, BLANCHE LEWIS,  
ELLEN A. MEYER, EDWARD D. MOLDOVER, ARYEH NEIER,  
DAVID SEELEY, ALBERT SHANKER, HOWARD M. SQUADRON,  
and CHARLES H. SUMNER,

*Plaintiffs,*

—against—

EWALD B. NYQUIST, as Commissioner of Education of the  
State of New York, ARTHUR LEVITT, as Comptroller  
of the State of New York, and NORMAN GALLMAN, as  
Commissioner of Taxation and Finance of the State  
of New York,

*Defendants,*

—and—

GERALDINE M. BOYLAN, PRISCILLA L. CHERRY, JOAN M.  
DUCY, NORA H. FERGUSON, ANGELINA M. FERRARELLA,  
ERNEST E. ROOS, JR. and ADAMINA RUIZ,

*Intervenor-defendants.*

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Dated: New York, New York  
June 20, 1972

/s/ M. I. GURFEIN  
U.S.D.J.

**Answer of State Defendants**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
72 Civ. 2286

---

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY,  
BERT ADAMS, BERNARD BACKER, ALGERNON D. BLACK,  
THEODORE BROOKS, HERSCHEL CHANIN, NAOMI A. COWEN,  
ROBERT B. ESSEX, FLORENCE FLAST, REBECCA GOLDBLUM,  
BENJAMIN HAIBLUM, MARTHA LATIES, BLANCHE LEWIS,  
ELLEN A. MEYER, EDWARD D. MOLDOVER, ARYEH NEIER,  
DAVID SEELEY, ALBERT SHANKER, HOWARD M. SQUADRON,  
*Plaintiffs,*

—against—

EWALD B. NYQUIST, as Commissioner of Education of the  
State of New York, ARTHUR LEVITT, as Comptroller of  
the State of New York, and NORMAN GALLMAN, as Com-  
missioner of Taxation and Finance of the State of New  
York,

*Defendants,*

and

GERALDINE M. BOYLAN, PRISCILLA L. CHERRY, JOAN M.  
DUCEY, NORA H. FERGUSON, ANGELINA M. FERRARELLA,  
ERNEST E. ROOS, JR. and ADAMINA RUIZ,

*Intervenor-Defendants,*

and

EARL W. BRYDGES, as Majority Leader and President Pro  
Tem of the New York State Senate,

*Intervenor-Defendant.*

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*Answer of State Defendants*

The defendants Ewald B. Nyquist, Arthur Levitt, and Norman Gallman, by their attorney, Louis J. Lefkowitz, Attorney General of the State of New York, for their answer to the complaint herein:

1. Admit the allegations contained in paragraphs 6, 7, 13, and 16 of the complaint herein.

2. Deny each and every allegation contained in paragraphs 3, 14, 15, and 17 of the complaint herein.

3. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 4, 5, and 12 of the complaint herein.

4. As to the allegations contained in paragraph 1 of the complaint herein, admit that those allegations are the stated basis for the action herein and state the claims of the plaintiffs herein, but deny any conclusions as to the validity of those allegations and claims which might be drawn from those allegations.

5. As to the allegations contained in paragraph 2 of the complaint herein, admit that the jurisdiction of this Court is invoked in this action as stated therein, but deny any conclusions as to the validity of the claims in such action which might be drawn from those allegations.

6. As to the allegations contained in paragraphs 8, 9, and 10 of the complaint herein, deny that Chapter 414 of the Laws of 1972 specifically refers to 'sectarian schools, sets any religious test for the qualification of schools or

*Answer of State Defendants*

parents in order to receive the statutory benefits provided under the act, or in any way limits the application of the act to only nonpublic schools which are sectarian in control or teaching. Additionally, as to the allegations contained in paragraph 9 of the complaint herein, deny that the act provides for payment of tuition to schools and allege that reimbursement is provided to low income parents for a portion of the tuition paid by them to nonpublic schools, regardless of the nature of the school.

7. As to the allegations contained in paragraph 11 of the complaint herein, deny that Chapter 414 authorizes or directs payment for the purpose of sectarian instruction or worship, or provides for the payment of money specifically for the maintenance or repair of such facilities, but rather provides for the payment of moneys for maintenance and repair of nonpublic school facilities, whatever the nature of the school, in order to provide for the health and safety of the children attending those schools.

8. As to the allegations contained in paragraph 18 of the complaint herein, deny that Chapter 414 of the Laws of 1972 is unconstitutional and further deny that plaintiffs are entitled to any or all of the relief requested therein, or to any other relief.

FOR A FIRST, SEPARATE AND DISTINCT DEFENSE TO THE  
COMPLAINT HEREIN, DEFENDANTS ALLEGE:

9. Among the powers reserved to the States under the Constitution of the United States is the police power, that



*Answer of State Defendants*

is, the power to enact laws necessary to protect the health, welfare and safety of their inhabitants.

10. In enacting Article 12 of the Education Law, as added by Chapter 414 of the New York Laws of 1972, the Legislature specifically found that the State has a primary responsibility to ensure the health, welfare and safety of children attending both public and nonpublic schools; that the fiscal crisis in nonpublic education has caused a diminution of proper maintenance and repair programs, threatening the health, welfare and safety of nonpublic school children, particularly in urban areas; that nonpublic schools in low income areas are characterized by deteriorating physical structures; that the parents of children enrolled in nonpublic schools in such low income areas do not have the financial resources necessary to maintain the structures; and that the State has the right and obligation to ensure that the physical environment in nonpublic schools in such areas is both healthful and safe.

11. Article 12 of the Education Law was enacted to ensure such a safe and healthy physical environment for nonpublic school children.

12. Not all nonpublic schools are eligible for or may receive grants under Article 12.

13. To qualify for grants pursuant to Article 12, a school is required to be nonprofit, to be tax exempt, to provide education which satisfies the State compulsory education law, and have been designated as serving a high concentration of pupils from low income families for the purposes of Title

*Answer of State Defendants*

IV of the Federal Higher Education Act of 1965 (20 U.S.C.A. § 425).

14. Health, welfare and safety grants are provided in an amount equal to \$30 per pupil to be applied for costs of maintenance and repair. The grant will be increased by \$10 per pupil where the school building was built prior to 1947.
15. Schools are required to provide an audited statement of the amount spent for maintenance and repair in each year.
16. The grant provided to any school under this act may not exceed 50% of the average per pupil cost of equivalent maintenance and repair in the public schools of the State, nor may it exceed the amount actually expended for maintenance and repair as reported in the required audited statement.
17. The statute is a police power enactment with a secular purpose and primary effect. Its purpose is not to provide aid to nonpublic or sectarian schools but to protect school children from the dangers of unhealthy or unsafe school buildings. It does not result in excessive entanglement between government and religion.
18. The Supreme Court of the United States in *Everson v. Board of Education* (330 U. S. 1 [1947]) held constitutional school bus transportation provided for the safety of nonpublic school children.

*Answer of State Defendants*

19. The health and safety of nonpublic school children can be constitutionally protected by the State by such means as the Legislature deems appropriate, including health and safety grants to nonpublic schools.

20. Article 12 of the Education Law, as added by Chapter 414 of the Laws of 1972 is constitutional and valid.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE TO THE  
COMPLAINT HEREIN, DEFENDANTS ALLEGE:

21. In enacting Article 12-A of the New York Education Law, as added by Chapter 414 of the New York Laws of 1972, the Legislature specifically recognized that parents have a constitutional right to select either a public or nonpublic school education for their children, including a sectarian education; that that right is diminished or even denied to children of lower income families; and that the State has a right to make provision so that such families and their children are not prevented from exercising that constitutional right of selection because of their inability to pay.

22. Article 12-A would provide partial tuition reimbursement to parents of nonpublic school children, where the parents' State net taxable income is under \$5,000 per year.

23. Tuition reimbursement would be provided under Article 12-A in an amount equal to the lesser of 50% of tuition paid or \$5 per pupil per month in elementary school or \$10 per month in secondary school.

*Answer of State Defendants*

24. The Supreme Court of the United States has held that parents are constitutionally guaranteed the right to select a nonpublic education for their children, including sectarian education, as opposed to a public school education. (*Pierce v. Society of Sisters*, 268 U. S. 510 [1925].)

25. The Supreme Court has further held that access of citizens to the exercise of constitutional rights cannot be denied by a State because of inability to pay for the exercise of those rights (*Boddie v. Connecticut*, 401 U. S. 371 [1971]; *Harper v. Virginia State Board of Elections*, 383 U. S. 663 [1966]).

26. New York's provision for partial tuition reimbursement is reasonably calculated to enable low income parents to secure effective access to a constitutionally protected nonpublic school education.

27. The method by which reimbursement is provided does not result in excessive entanglement between the State and religion. The purpose and primary effect is secular, that is, the securing of constitutionally protected rights of citizens.

28. Article 12-A of the Education Law, as added by Chapter 414 of the Laws of 1972, is constitutional and valid.

**FOR A THIRD, SEPARATE AND DISTINCT DEFENSE TO THE  
COMPLAINT HEREIN, DEFENDANTS ALLEGE:**

29. The State has plenary power to determine the method of taxing private income of State residents.

*Answer of State Defendants*

30. The State has plenary power to determine the method of computing taxable income.

31. The State has plenary power to determine the portion of a resident's income which shall be subject to taxation.

32. The State permits taxpayers to claim almost all Federally permitted deductions in computing taxable income, including contributions to sectarian institutions and job related education expenditures. The State also permits some deductions not Federally recognized, such as life insurance premiums.

33. The Supreme Court of the United States has held that property of sectarian institutions may be exempted from taxation (*Walz v. State Tax Commission*, 397 U. S. 664 [1970]).

34. Chapter 414 of the New York Laws of 1972 added a new subsection j to section 612 of the New York Tax Law to permit parents of children in nonpublic schools to reduce their net taxable income by a fixed amount per child so enrolled, not exceeding three such children. The amount so deductible depends upon the income of the parents, lesser amounts being deductible as gross income increases.

35. The purpose and primary effect of this statute is to provide tax relief to tuition paying parents of children in nonpublic schools. Such purpose and primary effect is exclusively secular and provides no entanglement between the State and religion.

71a

*Answer of State Defendants*

36. Subsection j of section 612 of the Tax Law is clearly constitutional and valid.

WHEREFORE, defendants pray that the Court enter judgment holding Chapter 414 of the New York Laws of 1972 to be constitutional and valid and dismissing the complaint herein, and granting such other and further relief to the defendants as the Court may deem just and proper.

June 21, 1972

LOUIS J. LEFKOWITZ

*Attorney General of the  
State of New York*

*Attorney for the State Defendants*

By: /s/ JEAN M COON

JEAN M. COON

*Assistant Solicitor General*

Office and P. O. Address

The Capitol

Albany, New York 12224

Telephone: (518) 474-7138



**Order Granting Leave to Intervene**  
**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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[TITLE OMITTED IN PRINTING]

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A motion having come on to be heard, by order to show cause, why an order, pursuant to Rule 24, should not issue allowing Senator Earl W. Brydges, President Pro Tem and Majority Leader of the New York State Senate, to intervene in this case as a party defendant in his representative capacity and that he have all the rights and standing of a party, and the Court having considered said motion and the proposed answer tendered therewith, and it appearing to the Court that due and sufficient notice of said motion has been served on all parties to this cause, and there being no opposition thereto, and due deliberation being had thereon, it is

ORDERED that Senator Earl W. Brydges in his representative capacity as the Majority Leader and President Pro Tem of the New York State Senate, has leave to intervene in this cause and is hereby made a party thereto and to that end may file his said answer in the same manner and with like effect as if named an original party to this cause.

/s/ M. I. GURFEIN  
U.S.D.J.

Dated: June 20, 1972



**Answer of Intervenor-Defendant Brydges****UNITED STATES DISTRICT COURT****SOUTHERN DISTRICT OF NEW YORK**

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[TITLE OMITTED IN PRINTING]

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Intervenor-Defendant Senator Earl W. Brydges, residing at Niagara Falls, New York, as Majority Leader and President Pro Tem of the New York State Senate, by his attorneys John F. Haggerty and Louis P. Contiguglia, in his representative capacity for and on behalf of the Senate of the State of New York and as Majority Leader and President Pro Tem of the New York State Senate, for his answer to the complaint herein:

1. Denies paragraph 1, except admits that this is a civil action, that it is purportedly brought on behalf of all the plaintiffs named in the complaint and that it seeks preliminary and permanent injunctions.
2. Denies paragraphs 2 and 3.
3. States that he is without knowledge or information sufficient to form a belief as to the truth of paragraphs 4 and 5.
4. Admits paragraphs 6 and 7.
5. Denies paragraphs 8, 9, 10 and 11.
6. States that he is without knowledge or information sufficient to form a belief as to the truth of paragraph 12.
7. Admits paragraph 13.
8. Denies paragraphs 14, 15, 16 and 17.

*Answer of Intervenor-Defendant Brydges*

**FIRST DEFENSE**

9. This court lacks jurisdiction over the subject matter of this action.

**SECOND DEFENSE**

10. The complaint fails to state a claim upon which relief can be granted.

**THIRD DEFENSE**

11. The federal government and its judiciary lack jurisdiction to proscribe the parameters of debate of the Legislature of the State of New York.

WHEREFORE, intervenor-defendant Senator Earl W. Brydges, in his representative capacity-as Majority Leader and President Pro Tem of the Senate of the State of New York, demands a judgment and decree of this Court dismissing the complaint herein and declaring Chapter 414 of the New York Laws of 1972 to be constitutional.

Dated: Albany, New York

July 1, 1972

JOHN F. HAGGERTY

LOUIS P. CONTIGUGLIA

*Attorneys for Intervenor-Defendant*

*Earl W. Brydges*

The Capitol

Senate Chambers

Albany, New York 12224

75a

**Per Curiam Opinion dated July 21, 1972**

[printed in full in Appendix to Jurisdictional  
Statement in appeal 72-929 (green), pp. 46a-  
47a]

**Opinions of Gurfein and Cannella, JJ. and of  
Hays, C.J. dated October 2, 1972**

[printed in full in Appendixes to Jurisdictional  
Statements; officially reported at 350 F. Supp. 655  
and 350 F. Supp. 674, respectively]

**Order Amending Opinion**

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF NEW YORK**

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[TITLE OMITTED IN PRINTING]

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ORDERED that the opinion in the above matter dated and entered October 2, 1972, be and it hereby is amended to delete the word "plurality" in the first line of the last paragraph on page 12.

Dated: October 10, 1972.

/s/ PAUL R. HAYS  
Paul R. Hays, U.S.C.J.

/s/ JOHN M. CANNELLA  
John M. Cannella, U.S.D.J.

/s/ MURRAY I. GURFEIN  
Murray I. Gurfein, U.S.D.J.

**Order and Judgment dated October 20, 1972**

[printed in full in Appendixes  
to Jurisdictional Statements]

**Order Noting Probable Jurisdiction  
and Consolidating Appeals**

**SUPREME COURT OF THE UNITED STATES**

Nos. 72-694, 72-753, 72-791, and 72-929

---

Committee for Public Education and Religious  
Liberty et al.,

Appellants,

v.

Ewald B. Nyquist, as Commissioner of Education  
of the State of New York, et al.;

Warren M. Anderson, as Majority Leader and President  
pro tem of the New York State Senate,

Appellant,

v.

Committee for Public Education and Religious  
Liberty, et al.;

Ewald B. Nyquist, as Commissioner of Education  
of the State of New York, et al.,

Appellants,

v.

Committee for Public Education and Religious  
Liberty, et al.; and

Priscilla L. Cherry et al.,

Appellants,

v.

Committee for Public Education and Religious Liberty,  
et al.

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*Order Noting Probable Jurisdiction  
and Consolidating Appeals*

APPEALS from the United States District Court for the Southern District of New York.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours is allotted for oral argument.

January 22, 1973

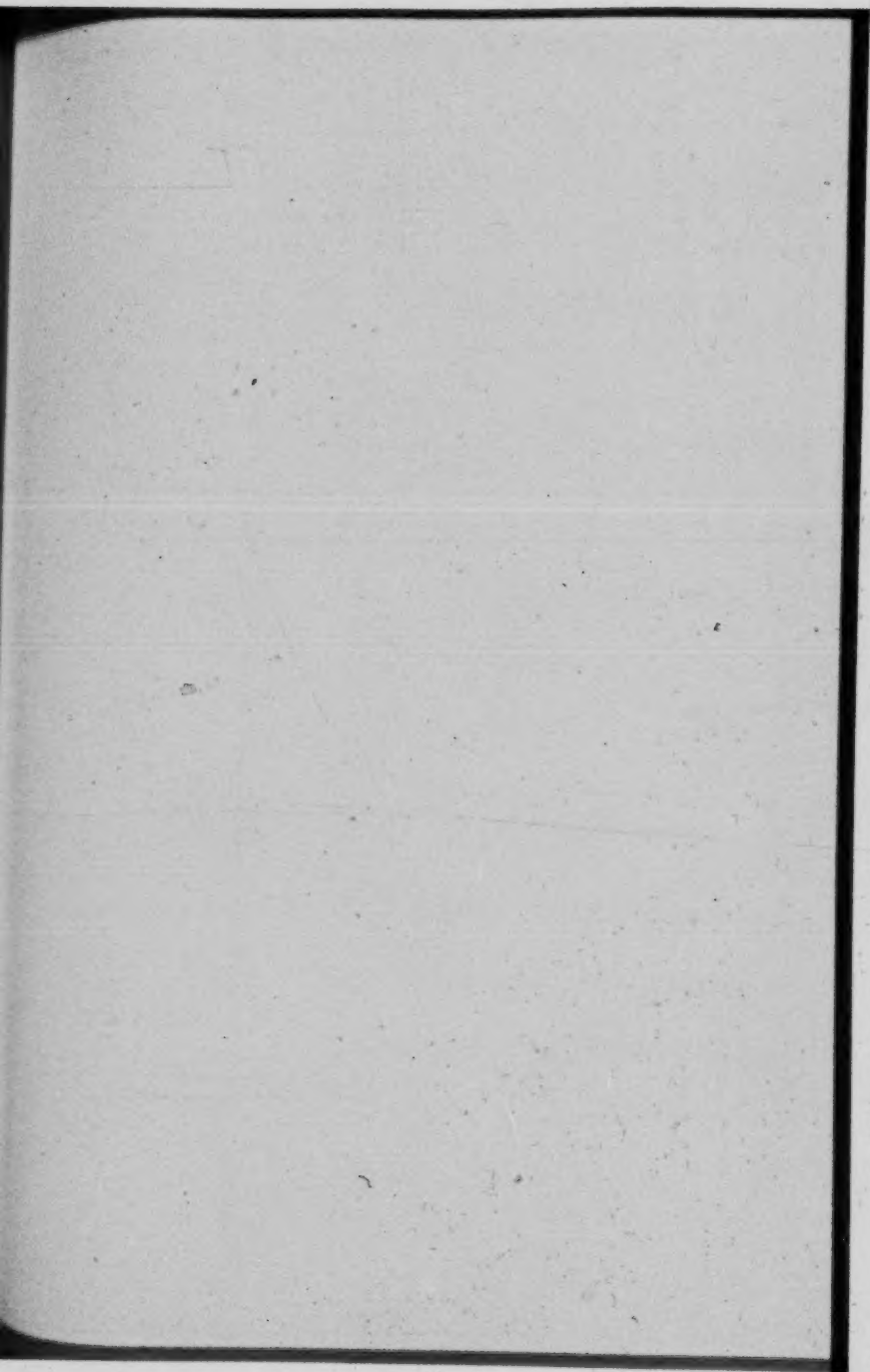
A true copy MICHAEL RODAK, JR.

Test:

Clerk of the Supreme Court of the  
United States

By (Illegible)  
Deputy

3.



**FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED**